

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CURTIS B FISHER,

Petitioner,

V.

RON HAYNES,

## Respondent.

CASE NO. 3:15-CV-05747-BHS-JRC

**ORDER TO FILE SUPPLEMENTAL  
ANSWER**

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner seeks relief from a state conviction. Petitioner filed the petition pursuant to 28 U.S.C. § 2254.

In respondent's original answer, respondent argued that the petition was time barred. Dkt. 9. In petitioner's reply, he argued that his petition was not time barred because he was subject to a not-more-than-life imprisonment sentence and that the United States Supreme Court's decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012), effected a later accrual date for the statute of limitations period. Dkt. 11.

1 The Court then ordered petitioner to show cause why his petition should not be dismissed  
2 without prejudice for failure to exhaust, based on the recent decision by the United States  
3 Supreme Court, holding that the ban on mandatory life without parole sentences for juvenile  
4 sentences applies retroactively. Dkt. 13 (*citing Montgomery v. Louisiana*, No. 14-280, slip. op.,  
5 577 U.S. \_\_\_\_ (Jan. 25, 2016)). Respondent filed a response to the Court’s order, arguing that  
6 petitioner was not sentenced to life without parole and thus, *Montgomery* does not apply in this  
7 case. Dkt. 14. Respondent also filed additional state court records. Dkt. 15.

8 Petitioner filed a “Motion for Showing Cause” stating that he was subject to a sentence of  
9 “not more than life imprisonment” and that his petition is not time-barred. Dkt. 16. Respondent  
10 filed a response. Dkt. 17.

11 Accordingly, the Court orders that respondent supplement his original answer (Dkt. 9)  
12 and include all arguments raised in respondent's response to the Court's order and in reply to  
13 petitioner's "Motion for Showing Cause." Respondent's supplemental answer must be filed on or  
14 before April 15, 2016. The supplemental answer will be treated in accordance with LCR 7.  
15 Accordingly, on the face of the supplemental answer, respondent shall note it for consideration  
16 on the fourth Friday after filing. Petitioner may file and serve a response not later than the  
17 Monday immediately preceding the Friday designated for consideration of the matter, and  
18 respondent may file and serve a reply not later than the Friday designated for consideration of the  
19 matter.

20 Dated this 16<sup>th</sup> day of March, 2016.

  
J. Richard Creatura  
United States Magistrate Judge